

SB 209 FACT SHEET

MARCH 2007

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On behalf of the Montana Association of Clerks of District Court

For Distribution to House Business and Labor Committee

RE: Hearing on 3/21/07

BACKGROUND:

In 1987 the Montana legislature enacted legislation creating the occupation of registered process server and levying officer.

The Board of Private Security Patrol Officers and Investigators, under the State Department of Labor and Industry provides written examinations to applicants wishing to pursue this occupation. If the applicant passed the examination, a letter was provided to the applicant by the Board, which stated that the applicant had taken and passed the Process Server examination.

Upon passing the examination, the applicant would then obtain a surety bond from a bonding company in the amount of \$10,000 per individual or \$100,000 per firm.

After obtaining the bond, the applicant would provide the Clerk of District Court in the county in which he resides or has his principal place of business, with the bond and letter from the Board stating that the applicant had passed the examination. Upon payment of a \$100.00 fee, the Clerk of the District Court would then issue to the applicant a certificate of registration as a process server and assign a number to that process server.

The fee would be deposited in the county general fund for district court operations, unless the county had a district court fund, then the fee would be deposited in that fund.

A certificate of registration is effective for a period of two (2) years from the date of filing with the Clerk of District Court. Upon expiration of two (2) years, a process server must obtain a new certificate of registration and pay the \$100.00 fee before a new certificate of registration could be provided.

Each Clerk of the District Court maintains a list of all process servers registered in the county.

Since the implementation of the 1987 legislation, no one has been responsible for the regulation and oversight of process servers, although, the county attorney of the county of registration can revoke or suspend a certificate of registration.

In June of 2005, representatives of the Department of Labor and Industry spoke to the Montana Association of Clerks of District Court at their convention. They informed the Clerks they would be willing to standardize guidelines and examinations and create a central repository for process server registration. The Department indicated that it was willing to take over the administration of Process Server registration. The Association agreed to relinquish the issuance of the certificates to the Department of Labor and Industry and introduce legislation in the 2007 session.

What does SB 209 do?

Provides for the transfer of registration of process servers and levying officers from the Clerks of District Court to the Board of Private Security Patrol Officers and Investigators.

Provides clear intent that oversight and regulation of process servers and levying officers lies with the Board of Security Patrol Officers and Investigators.

Provides for a central repository with the Board of Private Security Patrol Officers and Investigators for registered process servers and allows a process server to be a member of the Board.

Provides clarification of exemptions from the requirement of process server registration.

Allows a process server to provide service of process in any county in this state.

Clarifies bonding requirements and levy limit and provides for the July 1, 2007, transfer of surety bonds held by the Clerk of District Court as of June 30, 2007, to the Board.

Provides for the "grandfathering" of current registered process servers by allowing those process servers to present the registration certificate to the Board, which shall exchange that registration certificate for a new certificate that expires on March 31, 2009.

SB 209 – TRANSFER REGISTERED PROCESS SERVERS TO BOARD OF PRIVATE SECURITY PATROL OFFICERS

SECTION BY SECTION ANALYSIS

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For Distribution to House Business and Labor Committee
Committee Hearing Date: 3/21/07

Section 1. 2-15-1781. RE: Board of private security patrol officers and investigators. This section allows for a registered process server to be a member of the Board.

Section 2. 25-1-1101. RE: Registered process server—levying officer—use of title reserved. This section defines the title of process server for purposes of registration and allows service of process by a process server in any county in the state. It also provides a “grandfather” clause which states “A process server who holds a valid certificate of registration from a clerk of court in this state as of July 1, 2007, shall present the registration certificate to the board, and the board shall **exchange** that registration certificate for a new certificate that expires on March 31, 2009.”

Section 3. 25-1-1104. RE: Handbook for process servers. This section states that the Department of Labor & Industry shall publish the handbook and that the Board of Private Security Patrol Officers and Investigators shall develop and administer the examination based on the handbook.

Section 4. 25-1-1107. RE: Proof of service—requirements. This section deletes the requirement that the proof of service must indicate the county in which the process server is registered.

Section 5. 25-1-1111. RE: Bond required—levy limited. This section clarifies the bond required and levy limit. It further provides that a clerk of Court holding a surety bond for a process server under this Section as of June 30, 2007, shall transfer the original bond and any support documentation to the Board on July 1, 2007. (The effective date of this Bill.)

Section 6. 25-1-1112. RE: Action on bond. This section transfers the authority to pursue action on the bond from the County Attorney to the Board of Private Security Patrol Officers and Investigators and allows the Board to revoke the process server’s registration within a timeframe established by rule.

Section 7. 25-3-105. RE: Person serving process—penalty for obstruction—exception. This section clarifies the title and chapter under which a process server is

registered and clarifies that an unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant.

Section 8. 25-3-201. Deliver of papers to officer. This section removes the burden from the Clerk of any District Court to forward by mail any process, summons or other papers required in the cause and places that responsibility on a party in the civil action or the party's agent. The section further removes the responsibility of the Clerk of District Court from forwarding process in one county that is intended for service in another county and places that duty on the sheriff, registered process server, or other officer directed to receive the documents.

Section 9. RE: 25-3-203. Prepayment of cost of service. This section clarifies the requirement that the cost of service must be prepaid before an officer or registered process server is required to perfect service of process.

Section 10. RE: 25-3-204. Officer to exhibit process. This section clarifies that an officer or registered process server executing a service of process shall display the service of process, all attached papers, and an identification card upon request by an interested party at any time during execution of the service of process.

Section 11. RE: 25-3-302. Return prima facie evidence. This section clarifies that the return of the sheriff or registered process server upon process or notices is prima facie evidence of the proof of the process or notices having been served as stated.

Section 12. RE: 37-60-101. Definitions. This section adds the definition of "Process server".

Section 13. RE: 37-60-103. Purpose. This section adds "process servers" to the purpose section to increase the levels of integrity, competency, and performance in order to safeguard the public health, safety, and welfare against illegal, improper or incompetent actions committed by them.

Section 14. RE: 37-60-105. Exemptions. This section clarifies exemptions. It provides that all persons listed as exempt in subsection (1) are not exempt for the purposes of acting as registered process servers **except** that it does not apply to attorneys or persons who make 10 or fewer services of process in a calendar year, as provided in 25-1-1101.

Section 15. RE: 37-60-202. Rulemaking power. This section allows the Board to adopt and enforce rules for process servers and exempts process servers from having to file an insurance policy with the board.

Section 16. RE: 37-60-301. License required—process server registration required. This section provides that it is unlawful for any person to act as or perform the duties of a process server for more than 10 services of process in a calendar year without being issued a certificate of registration **by the board** except if you are a sheriff, constable,

coroner, elisor, or other government employee who is acting in the course of employment; or a licensed attorney as provided under 25-1-1101 (2).

Section 17. RE: 37-60-303. License or registration qualifications. _ This section adds applicants for registration as process server to the list of qualifications.

Section 18. RE: 37-60-304. Licenses and registration.—application form and content. This section adds that an application for a certificate of registration as a process server must be submitted to the department and accompanied by the application fee set by the board. It states the requirements of the contents of the application and allows the Board to verify the statements in the application and the moral character of each applicant for certificate of registration of a process server. In addition, it provides for the submittal of fingerprints as a prerequisite to the issuance of a certificate of registration for process servers.

Section 19. RE: 37-60-405. Approval of weapons. This section provides weapons to be carried by armed licensees or holders of identification cards as private security personnel or private investigators must be approved by the board.

Section 20. RE: Repealer. This section repeals 25-1-1103 – Fee – duration of certificate which pertains to the fee and duration of the certificate of registration that was issued by the Clerk of District Court,

It repeals 25-1-1105 – List of process servers--identification which mandates that the Clerk of District Court maintain a list of all process servers registered in the county, that the Clerk must assign a number to each registered process server, and that the Clerk must furnish an identification card that the process server must have in his possession during the course of serving process.

It repeals 25-1-1106 – Revocation or suspension of certificate which allows the county attorney of the county of registration to revoke or suspend the certificate of registration of a registered process server and conduct an investigation concerning the revocation and suspension. It also mandates that the county attorney notify the Clerk of the District Court when a certificate of registration is suspended, revoked, or reinstated.

Section 21. Effective date. The effective date of this Bill if passed and approved is July 1, 2007.